

DOING BUSINESS IN COLOMBIA

Colombia is located in the northernmost part of South America. Its population is estimated in over forty one (41) million people, with at least ten (10) million living in the capital city of Bogotá. Colombia's main language is Spanish.

Colombian has a democratic and centralized government. It is divided politically into departments, districts and municipalities.

The President of the Republic is the chief of State and is elected for a four-year term. Reelection is available for an additional term. The Congress is divided in two chambers, one of national constituency and one of territorial constituency. The courts hold power over the administration of justice.

Colombia's Gross National Product (GNP) has constantly increased over the past six (6) years. Up to the third trimester of 2008, it closed with an GNP of 3.1%. Nevertheless in the last trimester of 2009 the GNP decreased 0,2% in comparison to the same period in 2008.

1. FOREIGN INVESTMENT

The cornerstone principle of foreign investment regulations in Colombia is the non-discrimination of the foreign investor *vis-à-vis* national investors (and vice-versa). By and large, foreign investment is permitted in all economic sectors except for (i) national defense industry, and (ii) the processing or disposal of hazardous waste not produced in Colombia. In addition, there are limitations applicable to the oil and gas and the financial sectors.

There are screening laws applicable to foreign direct investment in the banking industry. An investment in more than 10% of the outstanding voting stock of a financial institution requires prior approval of the Financial Superintendence. This approval may not be denied provided the investment "*promotes public welfare, and that investor duly credits its moral and financial solvency*" as such is ascertained by the Financial Superintendence.

There are two modalities of foreign investment: foreign direct investment and portfolio foreign investment. Foreign direct investment is defined as the equity contribution made to the capital of local companies. Foreign direct investment may take the form of, *inter alia*, the importation of freely convertible currencies for the purchase of capital quotas or shares issued by local companies.

Portfolio foreign investment is the investment made through the local capital markets. Investors are namely driven by their interest of earning investment returns, rather than controlling a productive enterprise carried within the country. Such investments must be channeled through portfolio foreign investment funds duly authorized by the Financial Superintendence. Such funds are organized as collective investment accounts funded through contributions made by foreign companies or individuals.

1.1 Rights of Foreign Investors

Except for the need of reporting the foreign investment before the Central Bank (*Banco de la República*) and meeting other periodic reporting obligations, the remittance of proceeds and other investment returns is free under the foreign investment regime in Colombia.

As corollary to the non-discrimination principle enshrined in the Colombian foreign investment laws, duly reported foreign investments confer the following rights:

- Remittance abroad of proceeds of invested currency (*i.e.* dividends);
- Reinvestment of all proceeds, if so desired by the investor;
- Capitalization of investment proceeds;
- Remittance of investment sale proceeds, or remaining funds abroad after the local company is wound up or liquidated.

The foregoing exchange rights may not be diminished or curtailed, except as a consequence of temporary measures adopted by the Central Bank or the government whenever the country's international reserves are reduced to less than three (3) months of imports. This event has not occurred since the exchange regime was liberalized in 1991.

1.2 Legal Stability Agreements

Law 963 of 2005, regulated by Decree 2950 of 2005 established the possibility for private investors to enter into legal stability contracts. These agreements are entered into with the respective ministry in charge of the sector where the investment is targeted. The purpose of these agreements is to

promote fresh foreign or local investments in certain business areas such as tourism, mining, oil, energy and infrastructure, amongst others.

These agreements have the purpose of guaranteeing the application of a stable legal framework for the investor. As consideration for such stability, investors undertake to make a payment of a premium ranging from zero point five percent (0.5%) and once percent (1%) of the amount to be invested.

The stability agreements shall specify the exact regulations applicable at the time of execution in order for these to be applied without change during a period of no less than three (3) years and not exceeding twenty (20) years.

Investors interested in this type of agreements must file an application, along with a feasibility study relating to the investment to be made. Any such request shall be revised and approved by an official committee established as per Decree 2950 of 2005 for such purpose.

The main obligations of an investor under a stability agreement include its obligation to actually make the investment, or enhance an existing investment. There is of course, the obligation to pay the stability premium. Failure to observe any of the foregoing undertakings will result in an early termination of the agreement.

Finally, it is worth to mention that legal stability agreements may not contravene mandatory provision of local or international law. Once the parties execute a stability agreement, and it is evaluated and approved by the relevant committee it must be filed before the Department of National Planning (*Departamento de Planeación Nacional*).

2. ANTITRUST

Any integration operation (*i.e.*, mergers and acquisitions) is subject to the prior approval of the Superintendence of Industry and Trade, provided the parties involved have combined assets and yearly revenues in excess of one hundred thousand (100.000) minimum monthly legal salaries¹(please refer to Section 8.3 for a definition of this term).

¹ Approximately USD\$26,588,879.00 calculated at an exchange rate of COP\$1,936 per dollar.

If such revenue/asset threshold is not met, the transaction falls within the general authorization regime. Therefore the transaction will not require any review or approval of a State competition regulatory authority.

3. SETTLEMENT OF DISPUTES

In Colombia, applicable regulations provide for different types of judiciary and non-judiciary procedures for the settlement of disputes. Such dispute settlement alternatives are available to foreign and local entities, including governmental agencies.

By means of Law 315 of 1996 an arbitration clause for international contracts is valid in Colombia. Such law also recognizes the possibility for parties to an international contract to choose the law applicable to the subject matter of the dispute. The only prohibition imposed on the parties to enter into this type of clauses is, if by doing so, they intend to evade mandatory provisions otherwise applicable under Colombian law. In this vein, it must be noted that Colombia is a signatory party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In addition, Colombia is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Therefore, subject to certain conditions, ICSID arbitration may be available to foreign investors in Colombia.

4. BUSINESS ENTITIES

The mere holding of ownership interests in investment concerns in Colombia does not create the obligation to be legally established within the country. However, if in addition to holding an investment, the intention of the investor is to conduct permanent activities in Colombia, it will be required to establish a local branch office.

For the incorporation of a company in Colombia, the investor needs to select a suitable corporate form. The Colombian Commerce Code provides for a number of corporate forms, ranging from partnerships to stock corporations.

Usually, foreign investors favor either a limited liability company or a stock corporation as vehicle for their endeavors in Colombia. This is due to the fact that under such business entity form, investor liability is limited to the amount of its equity contribution.

The government entity in charge of the inspection and compliance of companies is the Superintendence of Corporations; under applicable regulations, the following entities are subject to surveillance and have to comply with certain reporting obligations:

- Companies that by end-year report assets or income in excess of 30,000 minimum monthly legal salaries (please refer to Section 8.3 for a definition of this term);
- Any company subject to direct pension payments, provided that its year-end financial results show or foresee difficulties in the compliance of such payments;
- Any company not subject to the surveillance of another superintendence, undergoing a reorganization or bankruptcy proceeding;
- Any company not subject to the surveillance of another superintendence that finds itself in a control situation or corporate group, provided certain conditions are met; and
- Those expressly designated by the Superintendent.

4.1. Limited Liability Companies

Called *Sociedades de Responsabilidad Limitada* or “Ltda.” for its Spanish abbreviation, which must be included in the corporate name. In this type of corporate form partners’ liability is limited to the amount of their respective capital contributions, except for labor and tax liabilities. With respect to such liabilities, partners will be held subsidiary, albeit jointly, responsible with the company. Some of its basic characteristics are the following:

4.1.1 Minimum Capital

There is no minimum capital required for this type (or any type of company in Colombia). However the company’s capital contributions must be fully paid.

Capital is divided into quotas of same par value each, which are negotiable according to the law and the by-laws. Except as otherwise agreed under the by-laws, partners to a limited liability company are vested with a

preferential right of purchasing the company's outstanding quotas whenever other partners decide to sell their participation.

4.1.2 Number of partners

A limited liability company must be incorporated by a plural number of partners, without exceeding 25.

4.1.3 Board of Partners

The board is the corporate body at which venue material decisions for the company are taken, *inter alia*, amendment of corporate by-laws, early dissolution, mergers, split-offs, spin-offs, appointment of administrators, profit distribution, etc.

The board of partners needs to be convened at least once a year, within the first quarter of each calendar year. At this yearly meeting yearly financial statements are approved along with the administration activities for the preceding fiscal year and the distribution of profits.

4.1.4 Management

At least one of the partners is called to manage the company. However any individual without capital ownership may be appointed to administer the company.

4.1.5 Formal Requirements

Except as noted below, the by-laws of the company need to be extended through a public deed granted before a Colombian Notary Public. A copy of this public deed of incorporation needs to be registered before the Chamber of Commerce of the domicile of the company.

4.2. Stock Corporations

Stock Corporations, known as *Sociedades Anonimas* are the classic for-profit corporate form. They are essentially characterized by the shareholders' liability limitation up to the amount of their respective stockholdings. Although any such corporation may well negotiate its shares within local capital market,



its corporate by-laws may establish preemptive rights for the subscription or negotiation of shares issued by the corporation.

4.2.1 Minimum Capital Stock

There is no minimum required capital stock. Notwithstanding, at least fifty percent (50%) of the share capital of the corporation needs to be subscribed on the date of incorporation. In addition, at least one third (1/3) of each subscribed share needs to be paid in full. Payment of the remaining share price may be deferred for up to one (1) year.

4.2.2 Number of shareholders

Stock Corporations need to be organized with at least five (5) shareholders, none of whom may hold ninety-five percent (95%) or more of the corporation's outstanding share capital.

4.2.3 Shareholders Meeting

The Shareholders Meeting is the corporation's supreme governing body. It is to be convened at least once a year, within the first quarter of each calendar year in order to approve the preceding year's financial statements, the administration activities for the preceding period, and profit distribution.

4.2.4 Board Of Directors

A Board of Directors is a mandatory corporate body for administration in stock corporations². This decision-making body is entrusted with the establishment of the day-to-day management policies of the corporation. Normally, the Board of Directors previously clears the execution of certain agreements (depending on their nature or amount), and adopts decisions that are material in the ordinary course of the corporation.

The Boards of Directors needs to have at least three (3) members with their respective alternates. The shareholder meeting is in charge of appointing directors.

It is noteworthy that directors are not allowed to act as such in more than five (5) board of directors, simultaneously. This prohibition also applies to affiliated companies.

² Board of Directors is an optional body for other corporate forms.

4.2.5 *Management*

Management officers of stock corporations are appointed by the Shareholders Meeting. Management is normally comprised of at least one executive officer who will be responsible for the representation of the company *vis-à-vis* third parties.

Powers and limitations of the authority of legal representatives are set forth in the company's by-laws. Such powers and limitations need to be duly publicized by the mercantile registry kept by the corresponding chamber of commerce. If no such limitations are specified in the by-laws, or if so specified, are not publicized in the mercantile registry, it is understood that legal representatives may act on behalf of the company without restrictions as long as such activities fall within the company's corporate purpose or relate directly with its ordinary course of business.

4.2.6 *Statutory Auditor*

The statutory auditor is an independent individual within the corporation's structure³. The statutory auditor has the duty to ensure (i) that all acts and contracts of the corporation are in compliance with legal and corporate requirements, (ii) that accounting records are kept in accordance with Colombian GAAP, and (iii) that all adequate safeguard measures are set in place to protect and defend the assets of the corporation.

4.2.7 *Formal Requirements*

By-laws of the corporation need to be extended through a public deed granted before a Colombian Notary Public. A copy of this public deed of incorporation needs to be registered before the Chamber of Commerce of the domicile of the Company.

As mentioned in paragraph 4.1.5 above, if the corporation's assets at the time of incorporation are less than five hundred (500) minimum monthly legal

³ Statutory auditor is mandatory for stock corporations and for other companies with assets in excess of five thousand (5,000) minimum monthly legal salaries (COP\$2,575,000,000, approximately USD\$1,329,443.) and revenues in excess of three thousand (3,000) minimum monthly legal salaries (COP\$1,545,000,000 approximately USD\$797,666.00). Other corporate forms may elect to have a statutory auditor.

salaries⁴ and the amount of employees is less than 10, the corporation can be incorporated through the extension of a private document executed by the founding shareholders. If the corporation exceeds the thresholds mentioned above, it will be required to amend its by-laws through a public deed.

4.3 *Single Person Enterprises*

Since 1995, single person enterprises could be formed in Colombia as incorporated concerns. This was an exception to the long standing view that those companies could only be formed by a plural number of persons.

Through a single person enterprise (*Empresa Unipersonal*), an individual or legal entity is allowed to destine part of its assets towards specific business activities. This type of enterprise constitutes a truly incorporated concern and is formed through the execution of a private document detailing the name of the company, the activities to be performed, the amount of capital and number of quotas in which it will be divided and the indication of its managerial bodies. The regulation applicable to this type of company is the one set forth for limited liability companies.

Additionally, single person enterprises can be created without resorting to the formality of a public deed granted before a notary public as is required for all other companies.

4.4 *Simplified Shares Corporation (SAS)*

Law 1258 of 2008 created a new kind of corporation by shares in Colombia, known as *Sociedades por Acciones Simplificadas* "SAS". The main characteristics of this type of corporations are: (i) it allows the incorporation without a plural number of shareholders (it may be incorporated by a single individual or entity), and (ii) it is not required to record the company's by-laws in a public deed. The liability of shareholders is limited to the amount of the corresponding contribution and according to a legal provision the corporate veil is especially protected, which means the shareholder shall not be liable for the labor, tax or obligation of any other nature of the company, unless the vehicle is used to defraud third parties. Finally, this type of company allows shareholders to freely agree on the terms of the company's by-laws.

4.4.1 *Minimum Equity*

⁴ COP\$257,500,000, approximately USD\$133,006.00

The amount of authorized (reserve shares), subscribed and paid capital can be freely established by the shareholders, as well the mode and term to pay the shares; however the term to pay subscribed shares shall not exceed two (2) years.

4.4.2 Negotiation of shares in the public stock market.

According to a legal provision, companies that intend to trade their shares in the public stock market cannot have the S.A.S. structure.

4.4.3 Shareholders General Assembly

The shareholders assembly is the chief organ of the company and shall bear all direction attributions unless otherwise provided in the by-laws.

4.4.4 Management

(a) Although it is not mandatory to have a board of directors, nothing prevents shareholders from providing in the by-laws the existence of a board of directors, which case the board shall have the faculties provided therein.

(b) If not otherwise provided in the company's by-laws, the legal representative shall have full capacity to undertake any type of acts or agreements on behalf of the company without limitation.

4.4.5 External Fiscal Auditor

The company shall only be compelled to have an external fiscal auditor when the value of its gross assets as to December 31st of the immediate prior year is or exceeds five thousand (5,000) minimum monthly legal salaries (COP\$2,575,000,000, approximately USD\$1,329,443.00) and revenues in excess of three thousand (3,000) minimum monthly legal salaries (COP\$1,545,000,000 approximately USD\$797,666.00).

The external fiscal auditor shall be a licensed accountant bearer of a in effect professional card.

4.4.6 Formal requirements

The shareholders or their representatives (by proxy) shall execute the document containing the company's by-laws which is a private document (document of incorporation). The content and the signatures of such document must be authenticated before a notary public or the Chamber of Commerce secretary.

The document of incorporation, once authenticated, shall be recorded in the Chamber of Commerce of the municipality chosen as main domicile of the company. This type of company is understood incorporated once the incorporation documents have been duly recorded in the corresponding mercantile register.

5. BRANCH OFFICES OF FOREIGN COMPANIES

As indicated above, nationals of other countries intending to directly conduct permanent activities within the Colombian territory are obligated, as a matter of law, to incorporate a branch office in Colombia. In order to open a branch office in Colombia, a public deed needs to be extended before a Notary Public serving at the domicile of the branch. Such public deed needs to include (i) the by-laws of the foreign parent company, (ii) a copy of the decision issued by the competent corporate body of the parent company to open a branch office in Colombia, and (iii) documents evidencing that the officers have the authority to represent the company.

Once the above public deed is formalized, such public deed shall be registered before the Chamber of Commerce of the place of its domicile, and it requires filing and obtaining a tax identification number.

6. TAXATION

Relevant Colombian taxes include income tax, value added tax (VAT), stamp tax, levy over financial transactions, and municipal commercial tax (ICA). Further information on import and export duties is included under the trade section below.

6.1 *Income Tax*

As from the year 2008, the income tax rate for corporations and other legal entities is of thirty three percent (33%).

For individuals, tax regulations bring a table detailing differential tax rates levied by reference to yearly earnings thresholds. Although the corresponding amounts of earnings are annually increased in accordance with inflation percentage⁵, current income tax rates for individuals range between nineteen percent (19%) and thirty three percent (33%).

The lowest rate of nineteen percent (19%) corresponds to yearly earnings between COP\$26,764,950 (approximately USD\$13,824.87)⁶ and COP\$41.743.500 (approximately USD\$21,561.72); while the rate of twenty eight percent (28%) corresponds to yearly earnings between COP\$41.743.501 (approximately USD\$21,561.72) and COP\$100.675.500 (approximately USD\$52,001.80). For yearly earnings in excess of COP\$100.675.500 (approximately USD\$52,001.80), the applicable rate will be 33%.

Individuals with physical presence within Colombian territory for one hundred and eighty (180) days or more during a taxable year, be it continuous or not, shall be deemed Colombian residents for tax purposes. Likewise, branches, corporations or companies in general, domiciled in Colombia will be treated as Colombian residents for tax purposes.

Non-Colombian residents will only be liable for tax over Colombian sourced income. As from the fifth (5) year of residence in Colombia, they will become liable for their income tax over their worldwide income.

6.2 VAT

Sales, services and imports are subject to VAT. The general VAT rate is sixteen percent (16%). The general rate is subject to exceptions with respect to specific goods or services as named by applicable tax regulations.

6.3 Stamp Tax

Written instruments that set forth monetary considerations to be discharged in Colombia are subject to stamp tax. Stamp tax will accrue over such written instruments provided the amount of the monetary consideration specified therein is greater than COP\$142,578,000 (approximately USD\$64,808.18) for 2009.

⁵ Inflation for the year 2009 was around 2%.

⁶ Calculated at an exchange rate of COP\$1,936 per dollar.

Applicable stamp tax rates for the year 2009 is 0.5%. Since the year 2010, stamp tax rate will be 0%.

6.4 *Levy over Financial Transactions*

Any transaction involving the disposition or transfer of (i) funds deposited in savings or checking accounts, or deposits of any nature, (ii) funds deposited in the Central Bank (*Banco de la República*), and (iii) drawing of cashier's checks, is subject to the levy over financial transactions calculated at a rate of zero point four percent (0.4%) over the relevant amount of the disposition or transfer. Monthly movements in savings accounts in amounts below COP\$8,594,250 (approximately USD\$4,439.17) are exempt from this levy.

6.5 *Municipal Commercial Tax*

Gross income of entities, which corporate purpose includes commercial or industrial activities, or the provision of services, are taxable at the municipal level with ICA. ICA rates range between zero point four one four (0.414%) and one point one zero four (1.104%), applicable on the activity being conducted within the relevant municipal jurisdiction.

7. INTELLECTUAL PROPERTY

7.1 *Applicable Regulations*

General provisions governing this subject are contained in Decision 486 of 2000, a supranational law applicable to the signatory parties to the Andean Community of Nations (Bolivia, Colombia, Ecuador and Peru). This decision is regulated in Colombia by means of Decree 2591 of 2000 and also by regulation enacted by the Superintendence of Industry and Trade.

7.2 *Acquisition of Rights*

Rights over patents and trademarks are acquired in Colombia by means of its registration before the Superintendence of Industry and Trade. Such registration entitles the petitioner to prevent third parties to use, without authorization, the respective trademark or patent. The holder of the trademark and the patent is entitled to both judicial and administrative remedies.

7.3 *Application Requirements*

Trademark and patent registration filings are effected through the completion and presentation of certain prescribed registration forms provided by the Superintendence of Industry and Trade for such purpose. Usually, these forms include, among others, the following information: (i) applicant's name, address, contact numbers and e-mail; (ii) name of legal representatives or agents filing the application on behalf of corporate entities and contact information; (iii) for the case of patents, indication of the title and the name of the designer of the invention; (iv) a brief description of trademark or patent subject to the registration request; (v) in the case of trademarks, a description of the products and services covered; (vi) indication of payment of registrations fees and (vii) applicant's signature.

7.4 Terms of Effectiveness

Once trademarks have been registered before the Superintendence of Industry and Trade, such registration grants an exclusive right of use for a period of ten (10) years, which can be extended for additional successive terms of ten (10) years each.

The registration of new inventions entitles the holder thereof to an exclusive right to exercise its rights for a term of twenty 20 years. The exclusive term for registered improvements to existing inventions and for industrial designs is of ten (10) years. The foregoing terms are not susceptible of being extended.

7.5 Industrial Property Office

The Superintendence of Industry and Trade is the trademark and patent office for Colombia. In addition, the Superintendence of Industry and Trade has the power to impose fines to any person (either legal entities or individuals) infringing industrial property regime, such as trademark and industrial property regulations, as well as unfair competition regime, business restrictive practices, consumer protection, and rules applicable to measurements (system of units).

8. LABOR LAW

8.1 Employment Agreement

Under Colombian law, there are fixed term and indefinite term labor agreements. The trial period for the latter type is of two months, after which the

causes to unilaterally terminate the agreement by any of the contracting parties are exhaustively listed in the Colombian Labor Code.

Termination of the employment contract without a just cause results in the payment of an indemnification fixed by law. Such indemnification varies depending on the salary and the time of employment. No other severance payment has to be made by the employer upon termination of employment.

The following table indicates the amount of the indemnification to be paid to employees upon termination of the labor contract:

NUMBER OF YEARS WORKED	AMOUNT PAYABLE (EXPRESSED IN DAYS)
1 or less	30 days if salary is below 10 minimum monthly legal salaries (MMLS)
	20 days if salary is over 10 MMLS
1 or more	20 days per year/proportionately per year fraction is salary is below 10 MMLS
	15 days per year/ proportionately per year fraction is salary is over 10 MMLS

8.2 Benefits and Labor Rights

By mid February of each year, employers in Colombia have the obligation to make an annual payment in the severance fund (*Fondo de Cesantías*) chosen by each employee. This payment constitutes the yearly severance (*cesantía*), which is equal to one (1) monthly salary per year or year proportion. In addition, employers pay the employee an amount equal to twelve percent (12%) of the severance payment, on account of interest over the severance payment. This payment must be effectuated during the month of January of each year.

There is also a service premium equal to one (1) month's salary, payable in two (2) installments: half month's salary payable on the last day of June and

the other half during the first twenty (20) days of December. If the employee has not worked during the entire calendar year, the service premium accrues on a pro rata basis for the time worked during each semester.

Employees are entitled to a minimum of fifteen (15) business days of vacation per year, which may be taken proportionally to the time worked. In any case, employees must take at least six (6) days of vacation for each calendar year.

8.3 *Minimum Monthly Legal Salary*

Each year, the national government, in consultation with the industry trade associations and unions, sets the minimum monthly legal salary to be paid to employees during each calendar year. For 2010, the minimum monthly legal salary was set at COP\$515.000.00⁷.

8.4 *Payroll Taxes and Social Security Contributions*

There is a comprehensive list of payroll taxes and contributions to the social security system that Colombian employers are obligated to make. These legal contributions are determined by reference to the monthly salary of each employee and amount to approximately fifty five percent (55%) of the monthly salary.

8.5 *Foreign Employees*

Employers with over ten (10) employees, who wish to hire foreigners, need to comply with the ratio of national/foreign employees established by law. The total number of foreign employees must not exceed ten percent (10%) of the total number of employees for ordinary positions, or twenty percent (20%) of the total number of employees for managerial or specialized positions.

Due to the above, any employer intending to hire a foreigner needs to obtain a certification (*certificado de proporcionalidad*) issued by the Ministry of Social Protection. Such certification is an official document that states that the above-mentioned ratio is satisfied. In addition, it is important to mention that employers contracting foreigners have to verify that the employee has the correspondent working/business visa.

⁷ Approximately USD\$266.00..

9. **TRADE**

9.1 *Imports*

Colombia has an open regime for the introduction of goods and services into its territory. Notwithstanding, there are some restrictions applicable to certain goods, namely (i) a permit from the Ministry of Agriculture and Rural Development, for goods such as bird meat, wheat, corn, sorghum, starch, among others; (ii) quota limitations for products such as bovine meat; (iii) the use of a designated customs area for the introduction of fauna and flora; and (iv) importation of guns and explosives is only authorized to defense authorities.

9.2 *Exports – Special regimes*

Colombian applicable regulations provides for several legal schemes that offer advantages to exporters.

- **Plan Vallejo**

This is an export facility available upon request by any manufacturer, exporter or merchant to introduce raw materials and inputs with total or partial exemption for customs duties and VAT.

- **Temporary Importations for re-exportation**

This is a facility available to goods that are imported into the country with the purpose of being subsequently re-exported within a prescribed period of time, without being altered except for their own depreciation. Under such scheme, neither VAT nor customs duties are accrued over such goods. In the event that the goods in question are not to be exported within the prescribed period of time, then the good would have been deemed imported into the country. At such juncture, payment of import taxes and duties will accrue.

- **International Leasing**

Pursuant to this type of financing operation, it is possible to finance on a long-term basis, the temporary importation of

capital goods. Under such scheme, a foreign company leases to a Colombian resident an asset in exchange of periodic rental payments.

The above-mentioned scheme offers the following tax benefits: (i) custom duties are payable in bi-annual fees for a maximum period of five years; (ii) leasing related payments are VAT free; (iii) if the leasing is operational, the leaser may deduct one hundred percent (100%) of leasing payments made abroad, and (iv) for tax purposes, leasing payments are not considered to be national sourced income for the lessor.

- **Altex**

Corporations labeled by the local tax authorities as *Altex* or large exporters (*Altamente Exportadores*) have tax benefits such as (i) to use depository facilities in order to conduct industrial alteration processes over goods, which allows the importation of raw materials and inputs and the deferral of custom duties and VAT; (ii) to consolidate all shipments for the same product in one single export form; (iii) to avoid the actual inspection of goods in transit in the country, whether for import or export, and (iv) to become a permanent customs user.

- **Free Customs Zones**

Free customs zones are special-purpose areas within the national territory created to promote the industrialization and trade of goods and services in such areas of Colombia. Any individual or entity intending to operate within the confines of these areas must request a prior authorization before the local tax authorities. Once this permit is granted, the investor will be afforded the following benefits:

Tax benefits:

- Income tax at a rate of 15% (subject to certain exceptions);
- Customs duties will not accrue for goods introduced and consumed within the special customs zone;

- Goods transformed, manufactured or stored in the free zones are exempted from VAT;

Forex benefits:

- The possibility of maintaining currencies in deposits or bank accounts in national or foreign banks;
- General access to national credit.

10. INTERNATIONAL TREATIES

Colombia is party of a number of trade and preferential agreements that secure benefits for Colombian products that access certain foreign markets. Among these treaties, we have the Andean Community of Nations Agreement (“CAN”), the Group of Three Treaty (México, Colombia and Venezuela) and the Agreement of Economical Complementation between the member parties of CAN and MERCOSUR (Brazil, Argentina, Uruguay, Venezuela, Paraguay, and Bolivia, Chile, Colombia, Ecuador and Perú as associate members). There is the also the Andean Trade Preference Drug Eradication Act entered into with the USA, which is in full force, and the Generalized System of Preferences adopted by the European Union, which gives some of our national products preferential treatments.

Recently, Colombia and USA have entered into a free trade agreement, the effectiveness of which is pending congressional approval in USA. Colombia has entered into free trade agreements with Canada, the European Free Trade Association –EFTA– (Norway, Switzerland, Republic of Iceland and Liechtenstein), Chile and North Central American Triangle (El Salvador, Honduras and Guatemala).

Colombia has entered into double taxation agreements with Spain, Switzerland and Chile.